

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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AGENCE FRANCE PRESSE,

Plaintiff,

ECF Case

v.

10 Civ. 2730 (AJN) (MHD)

DANIEL MOREL

Defendant and
Counterclaim Plaintiff,

**DECLARATION OF BARBARA T. HOFFMAN
IN SUPPORT OF DEFENDANT-
COUNTERCLAIM PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

v.

AGENCE FRANCE PRESSE

Counterclaim Defendant,

And

GETTY IMAGES (US), INC., CBS
BROADCASTING, INC., ABC, INC.,
TURNER BROADCASTING SYSTEMS, INC.,
THE WASHINGTON POST COMPANY and
(AFP and Getty Licensees does 1 - et. al).

Third Party Counterclaim
Defendants
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BARBARA T. HOFFMAN alleges the following under penalty of perjury:

1. I am a member of the Bar of this Court and counsel of record for the Defendant-Counterclaim Plaintiff, Daniel Morel ("Morel"). I submit this declaration based upon personal knowledge, in support of Morel's motion for summary judgment, pursuant to Rule 56(a), Fed. R. Civ. P., on the issue of liability of Plaintiff-Counterclaim Defendant Agence France Presse ("AFP"), and Third Party Counterclaim Defendants Getty Images (US), Inc. ("Getty Images"), and The Washington Post Company (the "Washington Post"), for direct copyright infringement,

secondary copyright infringement and violations of the Digital Millennium Copyright Act (“DMCA”), § 1202(a) and § 1202(b), as well as in support of the motion to dismiss the Counterclaim Defendants’ Affirmative Defenses.

2. Incorporated herein by reference is Morel’s Third Amended Answer, Affirmative Defense and Counterclaims of June 13, 2011, (“Third Amended Answer”), Dkt. # 80.

3. Incorporated herein by reference is AFP’s Answer and Affirmative Defenses to Third Amended Counterclaims of July 6, 2011, Dkt. # 87.

4. Incorporated herein by reference is Getty Images’ Answer to Morel’s Third Amended Counterclaims of July 5, 2011, Dkt. # 85.

5. Incorporated herein by reference is the Washington Post’s Answer to Morel’s Third Amended Counterclaims of July 5, 2011, Dkt. # 86.

6. Attached hereto as Ex. A is a true and correct copy of Morel’s Certificate of Registration VA-701-374 for 42 digital color photographs entitled *Haiti Earthquake – First Day January 12, 2010, Daniel Morel Photos*, which was issued by the U.S. Copyright Office on February 24, 2010. The certificate and the images attached thereto, include the thirteen (13) Iconic Images which are the subject of this lawsuit. Ex. A was also marked as Exs. 2, 3 and 3-A at the Morel Dep. take on April 15, 2011.

7. Attached hereto as Ex. B are excerpts from the transcripts of the depositions of Morel taken on April 15, 2011 (“Morel Dep. Tr. Vol. I”), p. 12-13; 51-74; 88; 92-99; 101-104; and April 25, 2011 (“Morel Dep. Tr. Vol. II”), p. 184-193; 197-199; and related Exs. 8, 10, 12 and 16.

8. Attached hereto as Ex. C are excerpts from the transcript of the May 23, 2011 deposition of Vincent Amalvy, former Photo Director, AFP North America (“Amalvy Dep. Tr.”) p. 22-49; 50; 58-64; 68-69; 74-85; 89-248; and related Exs. 2 (Morel’s Second Amended Answer

incorporated herein by reference), 9-B, 12, 14-A, 15, 16, 22, 24 and 25-A. Amalvy is the 30(b)(6) witness for 1-4, AFP Subpoena (Hambach Dep. Ex. 2).

9. Attached hereto as Ex. D is a copy of Amalvy's Twitter page showing Amalvy's tweets to Lisandro Suero, which Twitter correspondence was marked as Ex. 4 at Amalvy Dep. and a January 12, 2010 e-mail from Amalvy to Daniel Morel at photomorel@yahoo.com, which e-mail was marked as Ex. 7A at the Amalvy Dep.

10. Attached hereto as Ex. E are e-mails to WAPIX with attachments of photographs of the Haiti earthquake with images by Pedre, Minsky and Morel. The photographs, including the Iconic Images were marked as Ex. 7-B (AFP000813-844) at the Amalvy Dep.

11. Attached hereto as Ex. F is the template for caption correction marked as Exhibit 13-A at the Amalvy Dep., the Caption Change Notice, marked as Ex. 14-B at the Amalvy Dep. (AFP000790), and the AFP Caption Correction, marked as part of Ex. 17 (AFP000787-790) at the Amalvy Dep.

12. Attached hereto as Ex. G is the AFP Mandatory Kill, marked as part of Ex. 17 (AFP00791) at the Amalvy Dep.

13. Attached hereto as Ex. H is (Amalvy Dep. Tr. p. 242-247 and AFP001026) is an August 26, 2010 e-mail from Amalvy to Phillippe Massonnet, marked as Ex. 26 at the Amalvy Dep.

14. Attached hereto as Ex. I are the AFP Guidelines for video and photo, marked as Ex. 27 at the Amalvy Dep. and at the Hambach Dep. as Ex. 22 (AFP000211-214; 228-234).

15. Attached hereto as Ex. J are excerpts from the transcripts of the depositions of Chief of Desk, AFP Paris Benjamin Fathers, taken on May 23, 2011 ("Fathers Dep. Tr. Vol. I"), p. 10-14; 17-21; 23-28; 43-45; 48-54; and May 24, 2011 ("Fathers Dep. Tr. Vol. II), 9-39; 43-52; 62-64; 66-

67; 72-74; and related Exs. 1, 2, 3, 6-E, 8, 9, 11, 12, 12-B, 13-A, 15, and 19. Fathers is the 30(b)(6) witness for ¶'s 1-4, AFP Subpoena (Hambach Dep. Ex. 2).

16. Attached hereto as Ex. K are excerpts from the transcript of the June 23, 2011 deposition of Senior International Editor at CNN International, David Clinch ("Clinch Dep. Tr."), p. 8-118; and related Exs. 2, 3, 5, 6, 7, 8, 13, 14 and 17.

17. Attached hereto as Ex. L are excerpts from the transcripts of the depositions of Getty Images Senior Paralegal, Heather Cameron, taken on July 20, 2011 ("Cameron Dep. Tr. Vol. I) p. 8-80; and July, 21, 2011 ("Cameron Dep. Tr. Vol. II), p. 89-159; and related Exs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 17, 19 and 26.

18. Attached hereto as Ex. M is the Getty Images Editorial, Rights-Managed and Rights-Ready Image and Footage License Agreement ("EULA"), marked as Ex. 16 (G006003-6009) at the Cameron Dep.

19. Attached hereto as Ex. N are excerpts from the transcript of the August 4, 2011 deposition of CNN Senior Manager Rights and Clearances, Paige Griffith ("Griffith Dep. Tr."), p. 44-45; 71-76; 87-102; and related Exs. 6, 7, 14 and 15.

20. Attached hereto as Ex. O are excerpts from the transcript of the August 4, 2011 deposition of CNN Assistant General Counsel, Stacey Wolf, ("Wolf Dep. Tr."), p. 22-26; 30-50; 62-80; 89-90; 93; and related Ex. 8. Wolf is the 30(b)(6) witness for CNN.

21. Attached hereto as Ex. P are excerpts from the transcript of August 31, 2011 deposition of AFP Photo Editor for Europe and the Middle East, Anna Orye ("Orye Dep. Tr."), p. 13; 15-58; 75-90, and related Exs. 1, 2, 5, 8, 11 and 12.

22. Attached hereto as Ex. Q are excerpts from the transcript of the August 31, 2011 deposition of Getty Images Senior Director of Photography, News and Sports, Francisco (Pancho)

Bernasconi (“Bernasconi Dep. Tr.”), p. 121-120; 122-124; 135-164; and 169-186; and related Exs. 1, 2, 3, 4, 5, 7, 9, 13 and 17.

23. Attached hereto as Ex. R are excerpts from the transcript of September 9, 2011 deposition of Catherine Calhoun, Senior Director Media Sales at Getty Images, (“Calhoun Dep. Tr.”), 13, 20, 23, 26, 30-32; 38-39; 43-47; 49-51; 58-59; 79-82; 161; 177; 181; 188-207; 217-223; 226-233; 239-244; and related Exs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 20, 21, 22, 25 and 26.

24. Attached hereto as Ex. S are excerpts from the transcript of September 9, 2011 deposition of Getty Images Director, Editorial Content, Christiane Eisenberg, (“Eisenberg Dep. Tr.”), 35-36; 38-49; 54-55; 97-98; 103-106; 121-122; and 125-126, and related Exs. 1, 2, 3 and 4.

25. Attached hereto as Ex. T are excerpts from the transcript of the September 14, 2011 deposition of TwitPic CEO & Founder Noah Winecoff (“Winecoff Dep. Tr.”), p. 6-57; and related Ex. 8.

26. Attached hereto as Ex. U is Winecoff Dep. Ex. 3 (TwitPic001-026).

27. Attached hereto as Ex. V are excerpts from the transcript of the September 15, 2011 deposition of AFP Deputy Photo Director, North America, Eva Hambach, (“Hambach Dep. Tr.”), p. 41-192; 227-262; and related Exs. 2, 3, 4, 6, 11, 12, 14, 17 and 21.

28. Attached hereto as Ex. W is Hambach Dep. Ex. 14 (AFP000688-AFP000699).

29. Attached hereto as Ex. X is the transcript of the September 15, 2011 deposition of AFP Marketing and Sales Director, Gilles Tarot, (“Tarot Dep. Tr.”), p. 24-26; 45-58; 65-78; and related Ex. 3.

30. Attached hereto as Ex. Y are excerpts from the transcript of the October 5, 2011 deposition of Twitter 30(6)(6) witness Jeremy Kessel, (“Kessel Dep. Tr.”), p. 5-65; and related Exs. 1 (TW1000002-35), and 4 (TWI000065-89, 147-152).

31. In preparing Morel 56. 1, to identify the images purchased and the photographer credit, I relied on the following exhibits: attached hereto as Ex. Z are Cameron Dep. Exs. 25 and 27, Bernasconi Dep. Ex. 16, and Calhoun Dep. Exs. 1 and 2 (G200000-200001).

32. Ex. AA - the status of Getty Images' License Agreement with AFP is under review by the Court and will be provided in accordance with the Court's disposition of the matter.

33. Attached hereto as Ex. BB are Getty Images Bates stamped documents G008148-8151; G008163-8168; G008172-8175; G008178-8181; and G008653-8657.

34. Attached hereto as Ex. CC are Corbis Bates stamped documents COR 0932-933; COR 0962; COR 1563-1566; COR 1662-1666; COR 1685; COR 1687 - 1689; COR 1693; COR 1763; COR 1825-1836; COR 1874-1876; COR 2075; COR 2118; COR 2149 and COR 2195.

35. Attached hereto as Ex. DD are Corbis Bates stamped documents COR 0948-0950, an e-mail from Peggy Porquet to ma_huanyu@yahoo.com.cn with reference to both Morel and Suero's TwitPic pages.

36. Attached hereto as Ex. EE are Corbis Bates stamped documents COR 0951-0953, showing Suero images with ImageForum/Getty Images watermarks.

37. Attached hereto as Ex. FF is a photograph of Iconic Image # 1 purchased by Phyllis Galembo and mailed to her on March 27, 2012 and then delivered to my custody on April 2, 2012.

38. Attached hereto as Ex. GG a copy of an article that appeared in *The British Journal of Photography* on March 17, 2010, entitled *#Buy My Photo*.

39. Attached hereto as Ex. HH are the TwitPic Terms of Service in effect on January 12, 2010, marked as Ex. A to the Third Amended Answer.

40. Attached hereto as Ex. II is Getty Images Withheld Doc. # 13, Bates stamped G011103-11106.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 27, 2012
New York, New York

Respectfully submitted,

THE HOFFMAN LAW FIRM

By: /s/
Barbara T. Hoffman (BH 8931)
330 West 72nd Street
New York, New York 10023
Tel. (212) 873-6200
Fax (212) 974-7245

*Attorney for Defendant-Counterclaim
Plaintiff Daniel Morel*